IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITR No.64 of 1996
Date of decision:22.12.2006

The Commissioner of Income Tax, Jalandhar

....Petitioner

versus

Shri Onkar Nath Aggarwal

....Respondent

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Dr. N.L.Sharda, Advocate, for the revenue.
Mr. Sanjay Bansal, Advocate, for the respondent.

JUDGMENT:

Following question of law has been referred for the opinion of this Court by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar, arising out of its order dated 20.5.1993 in ITA No.62(ASR)/1989, for the assessment year 1985-86:-

> "Whether, on the facts and in the circumstances of the case, the Ld. ITAT is right in law in holding that the expenses on account of commission amounting to Rs.1,04,650/- and Export Market Development Allowance amounting to Rs.1,48,713/- are not to be taken into account for the purpose of disallowance under sections 37(3A) of the Income Tax Act, 1961?"

The assessee claimed deduction towards commission and Export Market Development allowance. The Assessing Officer disallowed the same under section 37(3A) of the Income Tax Act, 1961 (for short, 'the Act'). The CIT(A) allowed the claim of the assessee, which has been upheld by the Tribunal.

We have heard learned counsel for the parties and perused the findings recorded.

Learned counsel for the assessee, in support of the view taken

by the Tribunal, relies upon judgment of this Court in **Commissioner of Income Tax v. Indo Asian Switchgears (P) Limited,** (2002) 257 645, wherein it was observed:-

> "Admittedly, the provisions of section 37(3A) of the Act place an embargo on the expenses incurred on the advertisement, publicity and sales promotion. This would mean that the expenses claimed by an assessee in connection with the advertisement, etc., have to be scrutinised and reduced in accordance with the slab prescribed in section 37(3A) of the Act. However, a discount allowed by an assessee to an agent is not an expense in connection with the publicity or advertisement, etc. It is an amount forgone by the assessee in favour of the dealer for effecting the actual sale. It is not like the fashion show conducted by a garment manufacturer, but a commission allowed to a dealer. Trade discount cannot be treated as a wasteful expenditure incurred by an assessee in connection with the sales' promotion. It is not a gift as given on a festival or a free sample as distributed by a pharmaceutical company to the doctors but an actual commission allowed or paid to a dealer. It does not fall within the mischief of section 37(3A) of the Act."

Learned counsel for the assessee submitted that though, the observations have been made with regard to commission paid to dealers, payment towards Export Market Development allowance stands on the same footing.

Learned counsel for the revenue is unable to show any contrary opinion or to rebut the submission made on behalf of the assessee.

In view of the above, we are of the view that the Tribunal was justified in holding that the payments in question were not covered by the disallowance specified under section 37(3A) of the Act.

Accordingly, the question referred is answered against the revenue and in favour of the assessee.

Reference is disposed of accordingly.

(Adarsh Kumar Goel)
Judge

December 22, 2006 (Rajesh Bindal)
'gs' Judge